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Supreme Court of the United States

October Term, 1946

\_\_\_\_\_  
No. 229  
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WILLIAM TALMADEGE SPEARS, *et al.*,  
*Petitioners,*

*vs.*

EVA MAE SPEARS, *et al.*,  
*Respondents.*

\_\_\_\_\_  
~~REPLY OF PETITIONERS TO BRIEF OF RESPONDENTS~~  
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PETITIONERS' REPLY TO RESPONDENTS' BRIEF

\_\_\_\_\_  
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*Of Counsel.*



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WILLIAM TALMADEGE SPEARS,  
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*Respondents.*

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## PETITIONERS' REPLY TO RESPONDENTS' BRIEF

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Petitioners say the jurisdiction of the United States Supreme Court is invoked under the authority of the United States Constitution and the Acts of Congress as set forth on pages 2, 3, 4, 5, 6 of petition for Writ of Certiorari and brief in support thereof, pages 10, 11, 12, 13, 14, 15.

Respondents' statement of case (pp. 2-6) shows that several cases are pending in the state court affecting the subject matter of this suit; but that part of the statement at the bottom of page 3 is an erroneous statement of facts, the truth is, at the time of the death of decedent there was an account in the Community National Bank of Pontiac, Michigan, which stood in the sole name of Mansfield L. Spears, and not a joint account as there stated.

Petitioners say the decree entered on May 6, 1946, by the Circuit Court of Oakland County, Michigan in favor of

Eva Mae Spears with reference to said bank account is void, and of no force and effect for the reason the Circuit Court of Oakland County, Michigan, did not have jurisdiction; that the estate of Mansfield L. Spears, deceased was in course of administration in the Probate Court of Oakland County, Michigan; that said Probate Court had exclusive jurisdiction of the administration of estates of deceased persons; that said proceedings could in no way affect the jurisdiction of the Federal court in this cause.

The relief prayed by petitioners is disclosed by the record (pp. 1-10 and Supp. Tr. Exhibit I, at pages 1 and 2 and page 3 of petition for Writ).

The petitioners seek only to have the court determine the interest of petitioners, and the interest of the estate of Mansfield L. Spears, deceased, in the estate of Mansfield L. Spears, deceased, which is in the course of administration in the probate court of Oakland County, Michigan; there is no dispute as to the pendency of the several actions in the state court; except, the pendency of these actions does not affect the jurisdiction of the Federal Court in cases of diversity of citizenship.

The jurisdiction of the probate court of Oakland County, Michigan, of the estate of Mansfield L. Spears, deceased, is exclusive as to the state courts; and no other state court has jurisdiction of any part of said estate.

Therefore, the circuit court judgment mentioned in Respondents' brief at the top of page 4, dated April 16, 1946, is void because the trial court had no jurisdiction over the administratrix, or over the subject matter; and because the decree involves and ousts the lawful jurisdiction of the probate court; and such proceedings void, or otherwise, would not affect the jurisdiction of the Federal court.

Anno. Stats. Michigan, Rev. Sec. 27.3178(19);  
 Brooks v. Hargrave, 179 Michigan 136;  
 Tyson v. Jeans, 204 Michigan 403;  
*In Re Shadley's Estate*, 279 Michigan 156;  
*In Re Butt's Estate*, 173 Michigan 504;  
 Schultz v. Carlson, 313 Michigan 323;  
 Barkwell v. Same, 313 Michigan 432.

Rule 12 (b) F. R. C. D. is a rule of procedure, and not jurisdiction, and must be followed as set forth therein.

Columbian Cat Fanciers Inc. v. Koehne *et al.*,  
 96 F. 2nd 530-532 (speaking demurrer);  
 Bowles Adm'r v. Glick Bro. L. Co., 146 F. 2nd 566.  
 Van Kirk *et al.* Campbell *et al.*, 7 F. R. D. 231;  
 Keefe v. Devonian, 6 F. R. D. 11;  
 Weis v. Los Angeles Broadcasting Co. *et al.*, 6  
 F. R. D. 33;  
 Miller v. National City Bank of N. Y. *et al.*, 147 F.  
 2nd 798;  
 Great Northern Life Ins. Co. v. Read Ins. Com-  
 mission, 322 U. S. 49.

### Argument

Jurisdiction of this court is urged as set forth in petition for Writ of Certiorari and brief in support at pages 13, 14, 15.

The Circuit Court of Appeals for the Sixth Circuit committed error as alleged in petition for writ of certiorari in sustaining the challenge of defendants, by motion to dismiss.

The motion of defendants to dismiss is a speaking demurrer or motion which attempts, in addition to raising the question of sufficiency of the bill of complaint to state a

cause of action, to introduce affirmative facts which if relevant, is properly part of an answer, but not of a motion.

Columbian Cat Fanciers Inc. v. Koehne *et al.*,  
96 F. 2nd 530-532;

Gaines v. Gaines, 157 F. 2nd 521;

Great Northern Life Ins. Co. v. Read Ins. Com-  
mission, 322 U. S. 49;

Miller v. National City Bank of N. Y. *et al.*, 147  
F. 2nd 798:

And as to the effect of the judgment mentioned by re-  
spondents anent the bank account, Michigan Laws, Act No.  
288, Chap. 1, Sec. 19, Pub. Acts 1939 as amended by Act No.  
26, Pub. Acts 1941, Stat. Ann. 1943, Rev. Sec. 27.3178(19),  
Provide: "Each judge of Probate shall have jurisdiction:

"5. And shall have and exercise all such other powers  
and jurisdiction as are or may be conferred by law."

The Supreme Court of Michigan in Brooks v. Hargrave,  
179 Michigan 136, said "It is well established in this state  
that the *probate court has exclusive jurisdiction of all  
matters relative to the settlement of estates of deceased  
persons* \* \* \* there can be no question that the probate court  
assumed jurisdiction of the subject matter in controversy  
**when the will was admitted to probate and the defendant  
qualified as executor.** It does not lose jurisdiction until  
the estate is finally closed. Having assumed jurisdiction,  
it has exclusive jurisdiction and no other court save an  
appellate one which subsequently assumes to act in the  
matter, should proceed further when the priority of juris-  
diction is called to its attention." Cited in

Schultz v. Carlson, *supra*, Barkwell v. Same, *supra*,

hence the judgment in favor of Respondent, Eva Mae  
Spears, mentioned in Respondents' statement, is void, and



may be attacked any time or place, direct or collateral; and whether void or not, does not affect Federal jurisdiction in this cause.

The Respondents have failed to meet the issue raised, and questions presented by petitioners' Application for Writ of Certiorari and therefore, Petitioners reassert their claim for RELIEF as prayed for in their petition for Writ of Certiorari to the Circuit Court of Appeals for the Sixth Circuit.

Respectfully submitted,

I. H. SPEARS, *Counsel.*

GEORGE M. JOHNSON,  
*Of Counsel.*